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OFFICE OF PETITIONS

In re Application of :
BARANOFF :
Application No. 09/916,178 : DECISION GRANTING PETITION
Filed: July 26, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 602936.1019 :
:

This is a decision on the petition under 37 CFR 1.137(b), filed September 2, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a proper and timely reply within two months of mailing of the September 4, 2001 Notice to File Missing Parts of Nonprovisional Application (Notice), which required the submission of the basic filing fee, an executed oath or declaration in compliance with 37 CFR 1.63, a \$130 surcharge fee, and substitute drawings in compliance with 37 CFR 1.84. On February 28, 2002, the Office received the \$355 small entity filing fee, the \$65 small entity surcharge fee, an executed declaration in compliance with 37 CFR 1.63, and a four month extension of time fee of \$720. However, the reply did not include the substitute drawings required by the Notice. On March 25, 2002, the Office mailed a Notice of Incomplete Reply (Nonprovisional), again requiring the submission of substitute drawings in compliance with 37 CFR 1.84, and indicating that the time for reply remains as set forth in the Notice of September 4, 2001. No reply thereto was received. Accordingly, the above-identified application became abandoned on March 5, 2002.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply (filing fee, surcharge fee, executed oath/declaration, and substitute drawings); (2) the petition fee (\$665); and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the September 4, 2001 Notice is accepted as having been unintentionally delayed.

There is no indication that petitioner herein, Mr. J. David Dainow, was ever given a power of attorney or authorization of agent in this application. Therefore, it is not apparent whether Mr. Dainow was in a position to have firsthand or direct knowledge of the facts and circumstances of

the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Further, if Mr. Dainow desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent documentation must be submitted. While a courtesy copy of this decision is being mailed to Mr. Dainow at the address noted on the latest communication; i.e., the Status Inquiry received February 3, 2005, all future correspondence will be directed to the above-noted address currently of record until such time as appropriate instructions are received to the contrary.

Telephone inquiries concerning this decision should be directed to Cynthia Kratz at (571) 272-3286, or, in her absence, the undersigned at (571) 272-3217.

This matter is being referred to the Office of Initial Patent Examination for continued processing.

Frances Hucks for
Brian Hearn
Senior Petitions Examiner
Office of Petitions

cc:

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